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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,284	09/10/2003	John Michael Harper	ACE-19189	1886

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT PAPER NUMBER

3634

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/658,284

Applicant(s)

HARPER, JOHN MICHAEL

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>02-09-05; 02-13-05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office action is in response to the application filed September 9, 2003 and the election and amendment filed March 9, 2005 by which claims 18-20 were canceled.

Election/Restriction

Applicant's election without traverse of Group I, i.e., claims 1-17 in the reply filed on March 9, 2005 is acknowledged.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 7, and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "to correspond to said first distance when said first length is less than said first distance" in the last two lines of claim 1, renders the claim indefinite. *In particular*, the shelving standards (as in line 2) are not elements of the claimed device and it is improper to seek to define claimed structure based on a comparison to some unclaimed element. *In this case*, the boundaries of the claim cannot be properly ascertained because one would not know whether their device infringed the instant claim until someone else later added a pair of shelving standards. Accordingly, the features of the device, itself, must be defined instead of relying upon a comparison with an ascertained element.

To correct this, it is suggested that the shelving standards be positively claimed. *For example*, "for mounting" in line 1 could be changed to --mounted--.

Claim 7 is rendered indefinite since the language of the claim appears to be inaccurate and/or misdescriptive. *In particular*, the "key" is not a washer, but rather the "spacer" is a washer.

The use of the phrase "may be" in claim 8, line 3, renders the claim indefinite. In particular, what "may" be to one "may not" be to another and thus the metes and bounds of the claim cannot be properly ascertained since it is unclear whether the recitation proceeding "may be" in claim 8 is being positively required or not.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Insomuch as the claims are best understood (in view of the Section 112, 2nd paragraph rejections advanced above), claims 1-7, 11, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,720,230 (Mansfield '230) in view of U.S. Patent No. 5,487,525 (Drabczyk *et al.* '525).

Mansfield '230 discloses a shelving system mounted to at least one pair (14) of spaced apart shelving standards spaced apart a first distance; at least one pair of planar keys (26) adapted for releasably interlocking mating with slots (16) in the standards (14); at least one pair of planar

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rigid bracket arms (74) mountable to the keys (26); mutually extendable slides (72, 68) mountable to the bracket arms (74) and translatable between a retracted position and an extended position cantilevered from each bracket arm (74); a rigid substantially planar shelf (34) at opposite ends thereof being mountable onto the slides wherein the shelf (34) has a first length measured between the opposite ends; the keys (26) include protruding hooked tangs (30); the slides (72 and 68) and shelf (34) are releasably lockable in the extended position (see Figure 3) by locking means (80, 48) defining a pin engaging an aperture in the slides.

The claims differ from Mansfield '230 in requiring at least one spacer defining a washer (claims 4 and 7) mountable by mounting means between the bracket arm and corresponding key.

Drabczyk *et al.* '525 teaches the use of spacers (128, 130, etc.) defining washers, i.e., circular with a hole in the middle, secured by mounting means (140).

It then would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the system of Mansfield '230 with at least one spacer mountable between the key and bracket arm to increase ease in use and to increase securement and stability of the shelf.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mansfield '230 in view of Drabczyk *et al.* '525 as applied to claims 1-7, 11, 16, and 17 above, and further in view of U.S. Patent No. 4,620,489 (Albano '489).

The claims differ from the above references in requiring the shelf to include modularly interlocking shelf members.

Albano '489 teaches the use of extendable members defining interlocked mating shelf members.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized interlocking shelf members for ease in use to the consumer since the size of the shelf can be varied as needed.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mansfield '230 in view of Drabczyk *et al.* '525 and Albano '489 as applied to claims 8 and 9 above, and further in view of U.S. Patent No. 6,515,590 (Lauria '590).

The claim differs from the above reference sin requiring an electronic merchandising means mounted within the shelf.

Lauria '590 teaches the use of an electronic means mounted within a shelf.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have placed an electronic means within a shelf for increased ease in organizational capabilities of the system.

Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mansfield '230 in view of Drabczyk *et al.* '525 as applied to claims 1-7, 11, 16, and 17 above, and further in view of U.S. Patent No. 5,185,971 (Johnson, Jr. '971).

The claims differ from the above references in requiring a selectively actuatable actuator mountable to each key which defines a threaded member (i.e., bolt) rotatable mounted to each key and a bored elongate member (i.e., a cylinder) threadably non-rotatably mounted onto the threaded member which are disposed in a cut-out in the key.

Johnson, Jr. '971 discloses a selectively actuatable actuator mountable to a key (42) which defines a threaded (50) member (i.e., bolt) rotatable mounted to each key and a bored elongate

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(50) member (i.e., a cylinder) threadably non-rotatably mounted onto the threaded member which are disposed in a cut-out (see Figure 5) in the key (42).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the keys of Mansfield '230 with the members, as taught by Johnson, Jr. for increased securement of the system.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

Please note, that due to the relocation of the U.S. Patent and Trademark Office from Arlington to Alexandria, Virginia, the Examiner's phone number will be changed. After April 7, 2005, please contact the Examiner at (571) 272-6832.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703)-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

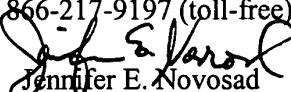
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

Jennifer E. Novosad/jen
March 29, 2005